

AMENDED IN SENATE JUNE 22, 2006

AMENDED IN ASSEMBLY MAY 31, 2006

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 2987**

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**Introduced by Assembly Members Nunez and Levine**  
**(Principal coauthors: Assembly Members McCarthy and Plescia)**

February 24, 2006

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An act to add Article 3.7 (commencing with Section 53058) to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, *and to amend Section 107.7 of the Revenue and Taxation Code*, relating to cable and video service.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2987, as amended, Nunez. Cable and video service.

**Existing**

(1) *Existing* law provides that any city, county, or city and county may authorize by franchise or license the construction and operation of a community antenna television system and prescribe rules and regulations to protect the subscribers. Existing law ~~provides~~ *requires* that cable and video service providers comply with specified customer service standards and performance standards.

This bill would establish a procedure for the issuance of state franchises for the provision of video service, which would be defined

to include cable service and open-video systems, that would be administered by the ~~Department of Consumer Affairs~~ *Secretary of State*. The ~~department~~ *Secretary of State* would be the sole franchising authority for state franchises to provide video services. The bill would require any person or corporation who seeks to provide video service in this state to file an application with the ~~department~~ *Secretary of State* for a state franchise with specified information, signed under penalty of perjury. By creating a new crime, the bill would impose a state-mandated local program. ~~Cities;~~

*The bill would provide that cities, counties, or cities and counties, or joint powers authorities would receive state franchise fees for video services provided within their jurisdictions, based on gross revenues, pursuant to specified procedures. The bill would also authorize local entities to establish a fee to support the capital costs of public, educational, and governmental access (PEG) channel facilities, in the amount of either 1% of gross revenues or a preexisting fee, whichever is lower. The*

*The bill would also require these local agencies to permit the installation of networks by holders of state franchises and would preclude enforcement of standards by the local agencies. The bill would also prohibit a holder of a state franchise from discriminating against or denying access to service to any group of potential residential subscribers because of their income and would provide that this provision is satisfied if certain conditions are met by holders with 500,000 or more or 500,000 or less telephone customers in California. The*

*The bill would prescribe the extent of the obligation of state franchise holders to provide public, educational, and government PEG channels. The bill would prescribe certain customer service and protection standards and penalties for material breaches of those standards. The bill would require, a holder, within 24 months after the issuing of a holder's first state franchise, to make a specified report of the extent to which video service is available to potential subscribers and to file the report with the Legislature, the department, the Governor, the Attorney General, and to post it on the holder's Web site. The bill would also require any state franchise holder employing more than 750 employees in California to make an annual report of specified information to the department.*

*(2) Existing property tax law specifies the manner in which local tax assessors determine the value of cable television possessory*

*interests that are created in a cable television franchise or license that is granted by a local government.*

*This bill would specify that this valuation method also applies to possessory interests created in a cable television franchise or license that is granted by the state under the bill.*

*(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 3.7 (commencing with Section 53058) is  
2 added to Chapter 1 of Part 1 of Division 2 of Title 5 of the  
3 Government Code, to read:

4  
5 Article 3.7. The Digital Infrastructure and Video Competition  
6 Act of 2006  
7

8 53058. This act shall be known and may be cited as the  
9 Digital Infrastructure and Video Competition Act of 2006.

10 ~~53058.1. (a) This article shall be known and may be cited as~~  
11 ~~the Digital Infrastructure and Video Competition Act of 2006.~~

12 ~~(b) The~~

13 53058.1. (a) The Legislature finds and declares all of the  
14 following:

15 (1) Video and cable services provide numerous benefits to all  
16 Californians including access to a variety of news, public  
17 information, education, and entertainment programming.

18 (2) Increased competition in the cable and video service sector  
19 provides consumers with more choice, lowers prices, speeds the  
20 deployment of new communication and broadband technologies,  
21 creates jobs, and benefits the California economy.

22 (3) To promote competition, the state should establish a  
23 state-issued franchise authorization process that allows market

1 participants to use their networks and systems to provide video,  
2 voice, and broadband services to all residents of the state.

3 (4) Legislation to develop this new process should adhere to  
4 the following principles:-

5 (i) Create a fair and level playing field for all market  
6 competitors that does not disadvantage or advantage one service  
7 provider or technology over another.

8 (ii) Promote the widespread access to the most technologically  
9 advanced cable and video services to all California communities  
10 in a nondiscriminatory manner regardless of socioeconomic  
11 status.

12 (iii) Protect local government revenues and their control of  
13 public rights of way.

14 (iv) Require market participants to comply with all applicable  
15 consumer protection laws.

16 (v) Complement efforts to increase investment in broadband  
17 infrastructure and close the digital divide.

18 (vi) Continue access to and maintenance of the public,  
19 education, and government (PEG) channels.

20 (vii) *Maintain all existing authority of the California Public*  
21 *Utilities Commission as established in state and federal statutes.*

22 ~~(5)~~

23 (b) Telephone corporations providing video service pursuant  
24 to this article shall not subsidize the cost of deploying network  
25 that is used to provide video service and other costs necessary to  
26 offer video service with revenue derived from the offering of  
27 basic telephone services.

28 53058.2. For purposes of this article, the following words  
29 have the following meanings:

30 (a) “Cable operator” means any person or group of persons  
31 that either provides cable service over a cable system and  
32 directly, or through one or more affiliates, owns a significant  
33 interest in a cable system; or that otherwise controls or is  
34 responsible for, through any arrangement, the management and  
35 operation of a cable system, as set forth in Section 522(5) of Title  
36 47 of the United States Code.

37 (b) “Cable service” is defined as the one-way transmission to  
38 subscribers of either video programming, or other programming  
39 service, and subscriber interaction, if any, that is required for the  
40 selection or use of video programming or other programming

1 service, as set forth in Section 522(6) of Title 47 of the United  
2 States Code.

3 (c) “Cable system” is defined as set forth in Section 522(7) of  
4 Title 47 of the United States Code.

5 (d) “Department” means the ~~Department of Consumer Affairs~~  
6 *Secretary of State*.

7 (e) “Franchise” means an initial authorization, or renewal of  
8 an authorization, issued by a franchising entity, regardless of  
9 whether the authorization is designated as a franchise, permit,  
10 license, resolution, contract, certificate, agreement, or otherwise,  
11 that authorizes the construction and operation of a cable system  
12 in public rights-of-way.

13 (f) *“Franchise fee” or “state-issued authorization fee” means*  
14 *the rent paid by the video service provider to the local entity in*  
15 *which service is being provided for the continued use of streets,*  
16 *public facilities, and other public rights-of-way of the local entity*  
17 *in order to provide service and is not a tax within the meaning of*  
18 *Section 24 of Article XIII of the Constitution. The fee shall be*  
19 *determined as specified in Section 53058.4 and other provisions*  
20 *of this article, if relevant.*

21 ~~(f)~~

22 (g) “Franchising entity” means the city, county, or city and  
23 county entitled to require franchises and impose fees on cable  
24 operators, as set forth in Section 53066.

25 ~~(g)~~

26 (h) “Incumbent cable operator” means the cable operator  
27 serving the largest number of cable subscribers in a particular  
28 city, county, or city and county franchise area on ~~the effective~~  
29 ~~date of this article~~ *January 1, 2007*.

30 ~~(h)~~

31 (i) “Local entity” means any city, county, ~~or city and county,~~  
32 *or joint powers authority* within the state within whose  
33 jurisdiction a holder of a ~~state-issued authorization~~ *state*  
34 *franchise* under this article may provide cable service or video  
35 service.

36 ~~(i)~~

37 (j) “Network” means a component of a facility that is wholly  
38 or partly physically located within a public right-of-way and that  
39 is used to provide video service, cable service, or voice or data  
40 services.

1     ~~(j)~~

2     (k) “Open-video system” or “OVS” means those services set  
3 forth in Section 573 of Title 47 of the United States Code.

4     ~~(k)~~

5     (l) “OVS operator” means any person or group of persons that  
6 either provides cable service over an open-video system directly,  
7 or through one or more affiliates, owns a significant interest in an  
8 open-video system, or that otherwise controls or is responsible  
9 for, through any arrangement, the management of an open-video  
10 system.

11    ~~(l)~~

12    (m) “Public right-of-way” means the area along and upon any  
13 public road or highway, or along or across any of the waters or  
14 lands within the state.

15    ~~(m)~~

16    (n) “State franchise” means a franchise that is issued pursuant  
17 to this article.

18    ~~(n)~~

19    (o) “Subscriber” means a person who lawfully receives cable  
20 service or video service from the holder of a ~~state-issued~~  
21 ~~authorization or~~ state franchise for a fee.

22    ~~(o)~~

23    (p) “Video programming” means programming provided by,  
24 or generally considered comparable to programming provided  
25 by, a television broadcast station, as set forth in Section 522(20)  
26 of Title 47 of the United States Code.

27    ~~(p)~~

28    (q) “Video service” means video programming services, cable  
29 service, or OVS service provided through facilities located at  
30 least in part in public rights-of-way without regard to delivery  
31 technology, including Internet protocol *or other* technology. This  
32 definition does not include (1) any video programming provided  
33 by a commercial mobile service provider defined in Section  
34 322(d) of Title 47 of the United States Code ~~or~~, or (2) video  
35 programming provided via an Internet access service as that term  
36 is defined in Section 231(e)(4) of Title 47 of the United States  
37 Code, *unless the video programming is made available by a*  
38 *video service provider solely to its video service subscribers.*

39    ~~(q)~~

1 (r) "Video service provider" means an entity providing video  
2 service. This term does not include an incumbent cable operator.

3 53058.3. (a) ~~The Department of Consumer Affairs~~ *Secretary*  
4 *of State* is the sole franchising authority for a state franchise to  
5 provide video service under this article. Neither the department  
6 nor any franchising entity or other local entity of the state may  
7 require the holder of a state franchise to obtain a separate  
8 franchise or otherwise impose any fee or requirement on any  
9 holder of a state franchise except as expressly provided in this  
10 article. Sections 53066, 53066.01, 53066.2, and 53066.3 shall not  
11 apply to holders of a state franchise.

12 (b) The application process described in subdivisions (d) and  
13 (e) and the authority granted to the department under this section  
14 shall not exceed the provisions set forth in this section.

15 (c) Any person or corporation who seeks to provide cable  
16 service or video service in this state after ~~the effective date of this~~  
17 ~~article~~ *January 1, 2007*, shall file an application for a state  
18 franchise with the department. The department may impose a fee  
19 on the applicant that shall not exceed the actual and reasonable  
20 costs of processing the application and shall not be levied for  
21 general revenue purposes.

22 (d) The application for a state franchise shall be made on a  
23 form prescribed by the department and shall include all of the  
24 following:

25 (1) A sworn affidavit, signed *under penalty of perjury* by an  
26 officer or another person authorized to bind the applicant, that  
27 affirms all of the following:

28 (A) That the applicant has filed or will timely file with the  
29 Federal Communications Commission all forms required by the  
30 Federal Communications Commission before offering cable  
31 service or video service in this state.

32 (B) That the applicant agrees to comply with all federal and  
33 state statutes, rules, and regulations, including, but not limited to,  
34 the following:

35 (i) A statement that the applicant will not discriminate in the  
36 provision of video or cable services as provided in Section  
37 53058.7.

38 (ii) A statement that the applicant will abide by all applicable  
39 consumer protection laws and rules as provided in Section  
40 53058.8.

1 (iii) A statement that the applicant will remit the fee required  
2 by Section 53058.4 to the local entity.

3 (iv) A statement that the applicant will provide PEG channels  
4 as required by Section 53058.5.

5 (C) That the applicant agrees to comply with all lawful city,  
6 county, or city and county regulations regarding the time, place,  
7 and manner of using the public rights-of-way, including, but not  
8 limited to, payment of applicable encroachment, permit, and  
9 inspection fees.

10 (D) That the applicant will concurrently deliver a copy of the  
11 application to any local entity where the applicant will provide  
12 service.

13 (2) The applicant's legal name and any name under which the  
14 applicant does or will do business in this state.

15 (3) The address and telephone number of the applicant's  
16 principal place of business, along with contact information for  
17 the person responsible for ongoing communications with the  
18 department.

19 (4) The names and titles of the applicant's principal officers.

20 (5) The legal name, address, and telephone number of the  
21 applicant's parent company, if any.

22 (6) A description of the service area footprint to be served  
23 including the socioeconomic information of all residents within  
24 the service area footprint.

25 (7) If the applicant is a telephone corporation, as defined in  
26 Section 234 of the Public Utilities Code, a description of the  
27 territory in which the company provides telephone service. The  
28 description shall include socioeconomic information of all  
29 residents within-in the telephone corporation's service territory.

30 (8) The expected date for the deployment of video service in  
31 each of the areas identified in paragraph (6).

32 (9) Adequate assurance that the applicant possesses the  
33 financial, legal, and technical qualifications necessary to  
34 construct and operate the proposed system and promptly repair  
35 any damage to the public right-of-way caused by the applicant.

36 (e) (1) The department shall notify an applicant for a state  
37 franchise and any affected local entities whether the applicant's  
38 affidavit described by subdivision—~~(d)~~ (e) is complete or  
39 incomplete before the 30th calendar day after the applicant  
40 submits the affidavit.



1 (2) If the department finds the affidavit is complete, it shall  
2 issue a state franchise before the 14th calendar day after that  
3 finding.

4 (3) If the department finds that the application is incomplete, it  
5 shall specify with particularity the items in the application that  
6 are incomplete and permit the applicant to amend the application  
7 to cure any deficiency. The department shall have 30 calendar  
8 days from the date the application is amended to determine its  
9 completeness.

10 (4) The failure of the department to notify the applicant of the  
11 completeness or incompleteness of the applicant's affidavit  
12 before the 44th calendar day after receipt of an affidavit shall be  
13 deemed to constitute issuance of the certificate applied for  
14 without further action on behalf of the applicant.

15 (f) The state franchise issued by the department shall contain  
16 all of the following:

17 (1) A grant of authority to provide video service, in exchange  
18 for the franchise fee required in Section 53058.4, in the service  
19 area footprint as requested in the application.

20 (2) A grant of authority to use the public rights-of-way in the  
21 delivery of video service, subject to the laws of this state.

22 (3) A statement that the grant of authority is subject to lawful  
23 operation of the cable service or video service by the applicant or  
24 its successor in interest.

25 (g) The state franchise issued by the department may be  
26 terminated by the video service provider by submitting notice to  
27 the department.

28 (h) Subject to the notice requirements of this article, a state  
29 franchise may be transferred to any successor in interest of the  
30 holder to which the certificate is originally granted, provided that  
31 the transferee first submits all of the information required of the  
32 applicant by this section to the department.

33 (i) In connection with, or as a condition of, receiving a state  
34 franchise, the department shall require a holder to notify the  
35 department and any applicable local entity within 14 business  
36 days of any of the following changes involving the holder or the  
37 state franchise:

38 (1) Any transaction involving a change in the ownership,  
39 operation, control, or corporate organization of the holder,  
40 including a merger, an acquisition, or a reorganization.

1 (2) A change in the holder's legal name or the adoption of, or  
2 change to, an assumed business name. The holder shall submit to  
3 the department a certified copy of either of the following:

4 (A) The amended state franchise.

5 (B) The certificate of assumed business name.

6 (3) A change in the holder's principal business address or in  
7 the name of the person authorized to receive notice on behalf of  
8 the holder.

9 (4) Any transfer of the state franchise to a successor in interest  
10 of the holder. The holder shall identify the successor in interest to  
11 which the transfer is made.

12 (5) The termination of any state franchise issued under this  
13 article. The holder shall identify both of the following:

14 (A) The number of customers in the service area covered by  
15 the state franchise being terminated.

16 (B) The method by which the holder's customers were notified  
17 of the termination.

18 (6) A change in one or more of the service areas of this article  
19 that would increase or decrease the territory within the service  
20 area. The holder shall describe the new boundaries of the affected  
21 service areas after the proposed change is made.

22 (j) As a condition of receiving a state franchise, the holder  
23 shall notify all applicable local entities that the local entity is  
24 included in the holder's service area under the state franchise  
25 being issued and that the holder intends to provide video service  
26 in the local entity's jurisdiction. The holder shall give the notice  
27 required under this subdivision not later than 10 days before the  
28 holder begins providing video service in the local entity's  
29 jurisdiction.

30 (k) (1) *Within 24 months after issuance of the holder's first*  
31 *state franchise, and annually thereafter for eight additional*  
32 *years, the holder shall report the extent to which video service is*  
33 *available to potential subscribers within the holder's service*  
34 *area, including all of the following:*

35 (A) *The demographics of the service area.*

36 (B) *The percentage of homes in the service area that have*  
37 *access to service.*

38 (C) *The demographics of the portion of the service area that*  
39 *has access to service.*

1 (D) *The technology used by the holder to provide access to*  
2 *service.*

3 (E) *Whether the holder is in compliance with the provisions*  
4 *set forth in Section 53058.8.*

5 (F) *A brief description of any issues related to providing*  
6 *access to service within the holder's service territory, as*  
7 *provided under this article.*

8 (2) *The report shall be filed with the Legislature, the*  
9 *department, the Governor, and the Attorney General, and posted*  
10 *on the holder's Web site. The holder shall not be required to*  
11 *report competitively sensitive information.*

12 (l) (1) *A state issued franchise shall only be valid for 10 years*  
13 *after the date of issuance and the video service provider shall*  
14 *apply for a renewal of the state franchise if it wishes to continue*  
15 *to provide video service in the area covered by the franchise*  
16 *after the expiration of the franchise.*

17 (2) *The department shall ensure that the process for renewing*  
18 *the franchise complies with this section. The department may not*  
19 *renew the franchise unless the video service provider can show*  
20 *that it is in compliance with all of the requirements of this article*  
21 *and has no outstanding financial obligations to the state or any*  
22 *local entity that are expressly allowed under this article.*

23 ~~(k)~~  
24 (m) *The department shall develop information guides and*  
25 *other tools to help educate local entities and other interested*  
26 *parties about the various provisions of this article.*

27 53058.4. (a) *The local entity in which video service is*  
28 *provided pursuant to a state franchise may, subject to this*  
29 *article, impose by ordinance and receive a franchise fee as*  
30 *compensation for use of the public rights-of-way provided by the*  
31 *local entity to the holder of a state franchise. The holder of a*  
32 *state franchise that offers video service within the jurisdiction of*  
33 *the local entity shall calculate and remit to the local entity a state*  
34 *franchise fee, as provided in this section. The obligation to remit*  
35 *the state franchise fee to a local entity begins immediately upon*  
36 *provision of video service within that local entity's jurisdiction.*  
37 *However, the remittance shall not be due until the time of the*  
38 *first quarterly payment required under subdivision (g) that is at*  
39 *least 180 days after the provision of service began. The fee*  
40 *remitted to a city or city and county shall be based on gross*

1 revenues ~~earned~~, as defined in subdivision (d), derived from the  
2 provision of video service within that jurisdiction. The fee  
3 remitted to a county shall be based on gross revenues earned  
4 within the unincorporated area of the county. No fee under this  
5 section shall become due unless the local entity provides  
6 documentation to the holder of the state franchise supporting the  
7 percentage paid by the incumbent cable operator serving the area  
8 within the local entity's jurisdiction, as provided below. The fee  
9 shall be calculated as a percentage of the holder's gross revenues,  
10 as defined in subdivision (d).

11 (b) The ~~state~~ franchise fee shall be a percentage of the holder's  
12 gross revenues, as defined in subdivision (d), as follows:

13 (1) If there is an incumbent cable operator, the fee shall not be  
14 more than 5 percent of the holder's gross revenues or the  
15 percentage applied by the local entity to the gross revenue of the  
16 incumbent cable operator, whichever is ~~lesser~~ less.

17 (2) If there is no incumbent cable operator or upon the  
18 expiration of the incumbent cable operator's franchise, a local  
19 entity may, by ordinance, set the percentage applied to the gross  
20 revenues of all video service providers, provided that the fee  
21 shall not exceed 5 percent of gross revenues and shall be applied  
22 equally to all video service providers in the local entity's  
23 jurisdiction.

24 (c) No local entity or any other political subdivision of this  
25 state may demand any additional fees or charges or other  
26 remuneration of any kind from the holder of a state franchise  
27 based solely on its status as a provider of video or cable services  
28 other than as set forth in this section and may not demand the use  
29 of any other calculation method or definition of gross revenues.  
30 However, nothing in this section shall be construed to limit a  
31 local entity's ability to impose utility user taxes and other  
32 generally applicable taxes, fees, and charges under other  
33 applicable provisions of state law that are applied in a  
34 nondiscriminatory and competitively neutral manner.

35 (d) For purposes of this section, the term "gross revenues"  
36 means all revenue actually received by the holder of a state  
37 franchise, as determined in accordance with generally accepted  
38 accounting principles, that is derived from the operation of the  
39 holder's network to provide cable or video service within the  
40 jurisdiction of the local entity, including all of the following:

1 (1) All charges billed to subscribers for any and all cable  
2 service or video service provided by the holder of a state  
3 franchise, including all revenue related to programming provided  
4 to the subscriber, equipment rentals, late fees, and ~~not sufficient~~  
5 *insufficient* fund fees.

6 (2) Any fees imposed on the holder of a state franchise by this  
7 section that are passed through to, and paid by, the subscribers.

8 (3) Compensation received by the holder of a state franchise  
9 that is derived from the operation of the holder's network to  
10 provide cable service or video service with respect to  
11 commissions that are paid to the holder of a ~~state-issued~~  
12 ~~authorization~~ *state franchise* as compensation for promotion or  
13 exhibition of any products or services on the holder's network,  
14 such as a "home shopping" or similar channel, subject to  
15 paragraph (4) of subdivision (e).

16 (4) A pro rata portion of all revenue derived by the holder of a  
17 state franchise or its affiliates pursuant to compensation  
18 arrangements for advertising derived from the operation of the  
19 holder's network to provide video service within the jurisdiction  
20 of the local entity, subject to paragraph (1) of subdivision (e).  
21 The allocation shall be based on the number of subscribers in the  
22 local entity divided by the total number of subscribers in relation  
23 to the relevant regional or national compensation arrangement.

24 (5) *Any amounts received that are recorded as negative*  
25 *expenditure, or as a reduction to expenses.*

26 (e) For purposes of this section, the term "gross revenue" set  
27 forth in subdivision (d) does not include any of the following:

28 (1) Amounts not actually received, even if billed, such as bad  
29 debt; refunds, rebates, or discounts to subscribers or other third  
30 parties; or revenue imputed from the provision of cable services  
31 or video services for free or at reduced rates to any person as  
32 required or allowed by law, including, but not limited to, the  
33 provision of these services to public institutions, public schools,  
34 governmental agencies, or employees ~~other than~~ *except that*  
35 *forgone revenue chosen not to be received in exchange for trades,*  
36 *barters, services, or other items of value shall be included in*  
37 *gross revenue.*

38 (2) Revenues received by any affiliate or any other person in  
39 exchange for supplying goods or services used by the holder of a  
40 state franchise to provide cable services or video services.

1 However, revenue received by an affiliate of the holder from the  
2 affiliate's provision of cable or video service shall be included in  
3 gross revenue as follows:

4 (A) To the extent that treating the revenue as revenue of the  
5 affiliate, instead of revenue of the holder, would have the effect  
6 of evading the payment of fees that would otherwise be paid to  
7 the local entity.

8 (B) The revenue is not otherwise subject to fees to be paid to  
9 the local entity.

10 (3) Revenue derived from services classified as noncable  
11 services or nonvideo services under federal law, including, but  
12 not limited to, revenue derived from telecommunications services  
13 and information services, other than cable services or video  
14 services, and any other revenues attributed by the holder of a  
15 state franchise to noncable services or nonvideo services in  
16 accordance with Federal Communications Commission rules,  
17 regulations, standards, or orders.

18 (4) Revenue paid by subscribers to "home shopping" or  
19 similar networks directly from the sale of merchandise through  
20 any home shopping channel offered as part of the cable services  
21 or video services. However, commissions or other compensation  
22 paid to the holder of a state franchise by "home shopping" or  
23 similar networks for the promotion or exhibition products or  
24 services shall be included in gross revenue.

25 (5) Revenue from the sale of cable services or video services  
26 for resale in which the reseller is required to collect a fee similar  
27 to the ~~state~~ franchise fee from the reseller's customers.

28 (6) Amounts billed to ~~and collected from~~, *and collected from*,  
29 subscribers to recover any tax, fee, or surcharge imposed by any  
30 governmental entity on the holder of a state franchise, including,  
31 but not limited to, sales and use taxes, gross receipts taxes, excise  
32 taxes, utility users taxes, public service taxes, communication  
33 taxes, and any other fee not imposed by this section.

34 (7) Revenue from the sale of capital assets or surplus  
35 equipment not used by the purchaser to receive cable services or  
36 video services from the seller of those assets or surplus  
37 equipment.

38 (8) Revenue from directory or Internet advertising revenue,  
39 including, but not limited to, yellow pages, white pages, banner  
40 advertisement, and electronic publishing.

1 (9) Revenue received as reimbursement by programmers of  
2 marketing costs incurred by the holder of a state franchise for the  
3 introduction of new programming.

4 (10) Security deposits received from subscribers, excluding  
5 security deposits applied to the outstanding balance of a  
6 subscriber's account and thereby taken into revenue.

7 (f) For purposes of this section, in the case of a video service  
8 that may be bundled or integrated functionally with other  
9 services, capabilities, or applications, the ~~state~~ franchise fee shall  
10 be applied only to the gross revenue, as defined in subdivision  
11 (d), attributable to cable service or video service, as reflected on  
12 the books and records of the holder kept in the regular course of  
13 business in accordance with generally accepted accounting  
14 principles and Federal Communications Commission or Public  
15 Utilities Commission rules, regulations, standards, and orders, as  
16 applicable.

17 (g) The ~~state~~ franchise fee shall be remitted to the applicable  
18 local entity quarterly, within 45 days after the end of the quarter  
19 for the preceding calendar quarter. Each payment shall be  
20 accompanied by a summary explaining the basis for the  
21 calculation of the ~~state~~ franchise fee. If the holder does not pay  
22 the franchise fee when due, the holder shall pay a late payment  
23 charge at a rate per year equal to the highest prime lending rate  
24 during the period of delinquency, plus 1 percent. If the holder has  
25 overpaid the franchise fee, it may deduct the overpayment from  
26 its next quarterly payment.

27 (h) Not more than once annually, a local entity may examine  
28 the business records of a holder of a state franchise to the extent  
29 reasonably necessary to ensure compensation in accordance with  
30 subdivision (a). The holder shall keep all business records  
31 reflecting any gross revenues, even if there is a change in  
32 ownership, for at least four years after those revenues are  
33 recognized by the holder on its books and records. If the  
34 examination discloses that the holder has underpaid franchise  
35 fees by more than 5 percent during the examination period, the  
36 holder shall pay all of the reasonable and actual costs of the  
37 examination. If the examination discloses that the holder has not  
38 underpaid franchise fees, the local entity shall pay all of the  
39 reasonable and actual costs of the examination. In every other  
40 instance, each party shall bear its own costs of the examination.

1 Any claims by a local entity that compensation is not in  
2 accordance with subdivision (a), and any claims for refunds or  
3 other corrections to the remittance of the holder of a ~~state-issued~~  
4 ~~authorization~~ state franchise, shall be made within three years  
5 and 45 days of the end of the quarter for which compensation is  
6 remitted, or three years from the date of the remittance,  
7 whichever is later. Either a local entity or the holder may, in the  
8 event of a dispute concerning compensation under this section,  
9 bring an action in a court of competent jurisdiction.

10 (i) The holder of a state franchise may identify and collect the  
11 amount of the ~~state~~ franchise fee as a separate line item on the  
12 regular bill of each subscriber.

13 (j) *The holder of a state franchise under this article who also*  
14 *provides stand-alone, residential, primary line, basic telephone*  
15 *service shall not increase this rate to finance the cost of*  
16 *deploying a network to provide video service.*

17 53058.5. (a) The holder of a state franchise shall designate a  
18 sufficient amount of capacity on its network to allow the  
19 provision of the same number of ~~PEG public, educational, and~~  
20 ~~governmental access (PEG)~~ channels, that the incumbent cable  
21 operator has activated and provided within the local entity under  
22 the terms of any franchise in effect in the local entity as of ~~the~~  
23 ~~effective date of this article~~ January 1, 2007. For the purposes of  
24 this section, a PEG channel is deemed activated if it is being  
25 utilized for PEG programming within the municipality for at least  
26 eight hours per day. The holder shall have six months from the  
27 date the local entity requests the PEG channels to designate the  
28 capacity. However, the six-month period shall be tolled by any  
29 period during which the designation or provision of PEG channel  
30 capacity is technically infeasible, including any failure or delay  
31 of the incumbent cable operator to make adequate  
32 interconnection available, as required by this subdivision.

33 (b) The PEG channels shall be for the exclusive use of the  
34 local entity or its designee to provide public, educational, and  
35 governmental channels. *The* PEG channels shall be used only for  
36 noncommercial purposes. However, advertising or sponsorship  
37 recognition may be carried on the channels for the purpose of  
38 funding the operation of the channels. The PEG channels shall all  
39 be carried on the basic service tier. To the extent feasible, *the*  
40 PEG channels shall not be separated numerically from other



1 channels carried on the basic service tier and the channel  
2 numbers for the PEG channels shall be the same channel  
3 numbers used by the incumbent cable operator unless prohibited  
4 by federal law. After the initial designation of PEG channel  
5 numbers, the channel numbers shall not be changed without the  
6 agreement of the local entity unless the change is required by  
7 federal law. Each channel shall be capable of carrying a National  
8 Television System Committee (NTSC) television signal.

9 (c) (1) If no PEG channels are activated and provided within  
10 the local entity as of ~~the effective date of this article~~ *January 1,*  
11 *2007*, a local entity whose jurisdiction lies within the authorized  
12 service area of the holder of a state franchise may request the  
13 holder to designate not more than a total of three PEG channels.

14 ~~The~~

15 (2) *The* holder shall have six months from the date of the  
16 request to designate the capacity. However, the six-month period  
17 shall be tolled by any period during which the designation or  
18 provision of PEG channel capacity is technically infeasible,  
19 including any failure or delay of the incumbent cable operator to  
20 make adequate interconnection available, as required by this  
21 subdivision.

22 (d) The holder shall provide an additional PEG channel when  
23 the locally produced, nonduplicated programming televised on a  
24 given channel exceeds ~~\_\_\_\_\_~~ 56 hours per week, ~~not including~~  
25 ~~televised public meetings or classes in an accredited learning~~  
26 ~~institution~~, as measured on a quarterly basis. The additional  
27 channel shall not be used for any purpose other than to continue  
28 programming additional government, education, or public access  
29 television.

30 (e) Any PEG channel provided pursuant to this section that is  
31 not utilized by the local entity for at least eight hours per day  
32 may no longer be made available to the local entity, and may be  
33 programmed at the holder's discretion. At the time that the local  
34 entity can certify to the holder a schedule for at least eight hours  
35 of daily programming, the holder of the state franchise shall  
36 restore the channel or channels for the use of the local entity.

37 (f) The content to be provided over the PEG channel capacity  
38 provided pursuant to this section shall be the responsibility of the  
39 local entity receiving the benefit of that capacity, and the holder

1 of a state franchise bears only the responsibility for the  
2 transmission of that content, subject to technological restraints.

3 (g) The local entity shall ensure that all transmissions, content,  
4 or programming to be transmitted by a holder of a state franchise  
5 are provided or submitted in a manner or form that is standard in  
6 the industry. The holder shall be responsible for any changes in  
7 the form of the transmission necessary to make it compatible  
8 with the technology or protocol utilized by the holder to deliver  
9 services. The provision of those transmissions, content, or  
10 programming to the holder of a state franchise shall constitute  
11 authorization for the holder to carry those transmissions, content,  
12 or programming, including, at the holder's option, beyond the  
13 jurisdictional boundaries of that local entity.

14 (h) Where technically feasible, the holder of a state franchise  
15 and an incumbent cable operator shall negotiate in good faith to  
16 interconnect their networks for the purpose of providing PEG  
17 programming. Interconnection may be accomplished by direct  
18 cable, microwave link, satellite, or other reasonable method of  
19 connection. Holders of a state franchise and incumbent cable  
20 operators shall provide interconnection of *the* PEG channels on  
21 reasonable terms and conditions and may not withhold the  
22 interconnection. If a holder of a state franchise and an incumbent  
23 cable operator cannot reach a mutually acceptable  
24 interconnection agreement, the local entity may require the  
25 incumbent cable operator to allow the holder to interconnect its  
26 network with the incumbent's network at a technically feasible  
27 point on the holder's network as identified by the holder. If no  
28 technically feasible point for interconnection is available, the  
29 holder of a state franchise shall make an interconnection  
30 available to the channel originator and shall provide the facilities  
31 necessary for the interconnection.

32 (i) A holder of a state franchise shall not be required to  
33 interconnect for, or otherwise to transmit, PEG content that is  
34 branded with the logo, name, or other identifying marks of  
35 another cable operator or video service provider. For purposes of  
36 this section, PEG content is not branded if it includes only  
37 production credits or other similar information displayed at the  
38 conclusion of a program. The local entity may require a cable  
39 operator or video service provider to remove its logo, name, or  
40 other identifying marks from PEG content that is to be made

1 available through interconnection to another provider of PEG  
2 capacity.

3 (j) In addition to any provision for *the* PEG channels required  
4 under subdivisions (a) to (k), inclusive, the holder shall reserve,  
5 designate, and activate a channel for carriage of public affairs  
6 programming that includes live and recorded coverage of state  
7 government and state legislative activities originated by the  
8 California Channel and designate and activate a channel for  
9 carriage of public affairs programming originated by C-Span.

10 (k) ~~After the effective date of this article January 1, 2007, and~~  
11 until the expiration of the incumbent cable operator's franchise,  
12 if the incumbent cable operator has existing unsatisfied  
13 obligations under the franchise to remit to the local entity any  
14 cash payments for the ongoing capital costs of public educational  
15 and governmental access channel facilities, the local entity shall  
16 divide those cash payments among all cable or video providers as  
17 provided in this section. The fee shall be the holder's pro rata per  
18 subscriber share of the cash payment required to be paid by the  
19 incumbent cable operator to the local entity for the capital costs  
20 of ~~public, educational, and governmental access~~ PEG channel  
21 facilities.

22 (l) In determining the fee on a pro rata per subscriber basis, all  
23 cable and video service providers shall report, for the period in  
24 question, to the local entity the total number of subscribers  
25 served ~~with~~ *within* the local entity's jurisdiction, which shall be  
26 treated as confidential by the local entity and shall be used only  
27 to derive the per subscriber fee required by this section. The local  
28 entity shall then determine the payment due from each provider  
29 based on a per subscriber basis for the period by multiplying the  
30 unsatisfied cash payments for the ongoing capital costs of ~~public,~~  
31 ~~educational, and governmental access~~ PEG channel facilities by  
32 a ratio of the reported subscribers of each provider to the total  
33 subscribers within the local entity as of the end of the period. The  
34 local entity shall notify the respective providers, in writing, of the  
35 resulting pro rata amount. After the notice, any fees required by  
36 this section shall be remitted to the applicable local entity  
37 quarterly, within 45 days after the end of the quarter for the  
38 preceding calendar quarter, and may only be used by the local  
39 entity as authorized under federal law.

1 (m) If there is no incumbent cable operator, or upon the  
2 expiration of the incumbent cable operator's franchise, a local  
3 entity may, by ordinance, establish a fee to support the capital  
4 costs of ~~public, educational, and governmental access~~ PEG  
5 channel facilities and to support institutional network facilities.  
6 The fee shall not exceed the per subscriber fee paid under  
7 subdivision (k), if such a fee was paid, or 1 percent of the  
8 holder's gross revenues, as defined in Section 53058.4, earned in  
9 the local entity, whichever is lower. For purposes of  
10 administration, the fee shall be deposited in a special fund  
11 established by the local entity to be used for purposes allowed  
12 under federal law.

13 (n) The following services shall continue to be provided by the  
14 incumbent cable operator that was furnishing services pursuant to  
15 a franchise until January 1, 2008, or until the term of the  
16 franchise expires, whichever is later:

17 (1) PEG production or studio facilities.

18 (2) Institutional network capacity, however defined or referred  
19 to in the incumbent cable operator's franchise, but generally  
20 referring to a private line data network capacity for use by the  
21 local entity for noncommercial purposes.

22 (3) Cable services to community public buildings, such as  
23 municipal buildings and public schools.

24 (o) The holder of a state franchise may recover the amount of  
25 any fee remitted to a local entity under this section by billing a  
26 recovery fee as a separate line item on the regular bill of each  
27 subscriber.

28 (p) A court of competent jurisdiction shall have exclusive  
29 jurisdiction to enforce any requirement under this section or  
30 resolve any dispute regarding the requirements set forth in this  
31 section, and no provider may be barred from the provision of  
32 service or be required to terminate service as a result of that  
33 dispute or enforcement action.

34 53058.6. Holders of state franchises shall comply with the  
35 Emergency Alert System requirements of the Federal  
36 Communications Commission in order that emergency messages  
37 may be distributed over the holder's network.

38 53058.7. (a) The local entity shall allow the holder of a state  
39 franchise under this article to install, construct, and maintain a  
40 network within public rights-of-way under the same terms and

1 conditions as applicable to telephone corporations, as defined  
2 under Section 234 of the Public Utilities Code, under applicable  
3 state and federal law.

4 (b) A local entity may not enforce against the holder of a state  
5 franchise any rule, regulation, or ordinance that purports to allow  
6 the local entity to purchase or force the sale of a network.

7 53058.8. (a) A cable operator or video service provider that  
8 has been granted a state franchise under this article may not  
9 discriminate against or deny access to service to any group of  
10 potential residential subscribers because of the income of the  
11 residents in the local area in which the group resides, as required  
12 by Section 541(a)(3) of Title 47 of the United States Code.

13 ~~(b) It is the intent of the Legislature that the principles for~~  
14 ~~competition in the provision of video service will require a level~~  
15 ~~playing field to assure that competition is fair, will require~~  
16 ~~widespread build-out of state-of-the-art services so that~~  
17 ~~competition can benefit the greatest number of customers, and~~  
18 ~~will prohibit discrimination, redlining, and service abandonment~~  
19 ~~so that a lack of competition will not be detrimental to customers.~~

20 (b) *Holders with more than 500,000 telephone customers in*  
21 *California satisfy this section if all of the following conditions*  
22 *are met:*

23 (1) *Within three years after it begins providing video service*  
24 *under this article, at least 25 percent of households with access*  
25 *to the holder's video service are low income households.*

26 (2) *Within five years after it begins providing video service*  
27 *under this article, at least 30 percent of the households with*  
28 *access to the holder's video service are low income households.*

29 (c) *Holders with less than 500,000 telephone customers in*  
30 *California satisfy this section if any of the following conditions is*  
31 *met:*

32 (1) *When the holder is a telephone service provider of last*  
33 *resort, as determined by the California Public Utilities*  
34 *Commission, and is offering service within its telephone service*  
35 *area, the holder shall offer video service to all customers within*  
36 *their telephone service area within a reasonable time, as*  
37 *determined by the state franchising authority. However, the state*  
38 *franchising authority shall not require the holder to offer*  
39 *services when the cost to provide service is substantially above*  
40 *the average cost of providing service in that community. If the*

1 holder is offering service outside its telephone service area, then  
2 no additional requirement applies.

3 (2) When the holder is not a telephone service provider of last  
4 resort, the holder offers video service to an entire municipality in  
5 a manner and sequence negotiated with that municipality that is  
6 predicated on the success of the holder in attracting customers.

7 (3) When the holder is offering video service and there is no  
8 other video service being offered, other than direct-to-home  
9 satellite service, no additional requirement applies.

10 (d) For holders with more than 500,000 telephone customers  
11 in California, either of the following shall apply:

12 (1) If the holder is deploying fiber optic facilities to the  
13 customer's premise, the holder shall provide access to its video  
14 service to a number of households at least equal to 25 percent of  
15 the customer households in the holder's telephone service area  
16 within two years after it begins providing video service under  
17 this article, and to a number at least equal to 40 percent of those  
18 households within five years.

19 (2) If the holder is not deploying fiber optic facilities to the  
20 customer's premise, the holder shall provide access to its video  
21 service to a number of households at least equal to 35 percent of  
22 the households in the holder's telephone service area within  
23 three years after it begins providing video service under this  
24 article, and to a number at least equal to 50 percent of these  
25 households within five years.

26 A holder shall not be required to meet the 40 percent  
27 requirement in paragraph (1) or the 50 percent requirement in  
28 paragraph (2) until two years after at least 30 percent of the  
29 households with access to the holders video service subscribe to  
30 it for six consecutive months.

31 (e) (1) After two years, the holder may apply to the state  
32 franchising authority for a waiver of the requirements of  
33 subdivision (b), (c), or (d). Notice of this application shall also  
34 be provided to the telephone customers of the holder, the  
35 Secretary of the Senate, and the Chief Clerk of the Assembly.

36 (2) Upon application, the franchising authority shall hold  
37 public hearings in the telephone service area of the applicant.

38 (3) In reviewing the failure to satisfy the obligations contained  
39 in subdivision (b), (c), or (d), the franchising authority shall

1 *consider reasonable technical, economic, and operational*  
2 *factors, including, but not limited to, all of the following:*

3 *(i) The ability of the holder to obtain access to rights-of-way*  
4 *under reasonable terms and conditions.*

5 *(ii) The degree to which developments or buildings are not*  
6 *subject to competition because of existing exclusive*  
7 *arrangements.*

8 *(iii) The degree to which developments or buildings are*  
9 *inaccessible using reasonable technical solutions under*  
10 *commercially reasonable terms and conditions.*

11 *(4) The franchising authority may grant the waiver only if the*  
12 *holder has made substantial and continuous effort to meet the*  
13 *requirements of subdivision (b), (c), or (d). If a waiver is granted*  
14 *the franchising authority shall establish new requirements.*

15 *(f) Local governments may bring complaints to the state*  
16 *franchising authority that a holder is not offering video service*  
17 *as required by this article, or the state franchising authority may*  
18 *open an investigation on its own motion. The state franchising*  
19 *authority shall hold public hearings before issuing a decision.*

20 *(g) If the state franchising authority finds that the holder is in*  
21 *violation of this article, it may, in addition to any other remedies*  
22 *provided by law, impose a fine not to exceed 1 percent of the*  
23 *holder's total monthly gross revenue received from provision of*  
24 *video service in the state each month from the date of the*  
25 *decision until the date that compliance is achieved.*

26 *(h) If a court finds that the holder of the state franchise is in*  
27 *violation of this section, the holder's state franchise shall*  
28 *immediately terminate and the court shall, in addition to any*  
29 *other remedies provided by law, impose a fine not to exceed 1*  
30 *percent of the holder's total gross revenue of its entire cable and*  
31 *service footprint in the state in the full calendar month*  
32 *immediately prior to the decision.*

33 *(i) As used in this section, the following definitions shall*  
34 *apply:*

35 *(1) "Household" means consistent with the United States*  
36 *Census Bureau, as a house, an apartment, a mobile home, a*  
37 *group of rooms, or a single room that is intended for occupancy*  
38 *as separate living quarters. Separate living quarters are those in*  
39 *which the occupants live and eat separately from any other*

1 *persons in the building and which have direct access from the*  
2 *outside of the building or through a common hall.*

3 (2) *“Low income household” means as those residential*  
4 *households located within the holder’s existing telephone service*  
5 *area where the average annual household income is less than*  
6 *\$35,000 based on the United States Census Bureau estimates*  
7 *adjusted annually to reflect rates of change and distribution*  
8 *through January 1, 2007.*

9 (3) *“Customer’s household” means as those residential*  
10 *households located within the holder’s existing telephone service*  
11 *area that are customers of the service by which that telephone*  
12 *service area is defined.*

13 (4) *“Access” means that the holder is capable of providing*  
14 *video service at the household address using any technology that*  
15 *provides two way broadband capability and comparable video*  
16 *programming, content and functionality regardless of whether*  
17 *any customer has ordered service or whether the owner or*  
18 *landlord or other responsible person has granted access to the*  
19 *household.*

20 (j) *Nothing in this section shall be construed to require a*  
21 *holder to provide video service outside its wireline footprint or to*  
22 *match the existing cable franchise territory of any cable*  
23 *provider.*

24 53058.9. (a) The holder of a state franchise shall comply  
25 with the provisions of Sections 53055, 53055.1, 53055.2, and  
26 53088.2, and any other customer service standards pertaining to  
27 the provision of video service required to be enforced by federal  
28 law, adopted by the department pursuant to subdivision (q) of  
29 Section 53088.2, or adopted by subsequent enactment of the  
30 Legislature.

31 (b) The local entity shall enforce all of the customer service  
32 and protection standards of this section with respect to  
33 complaints received from residents within the local entity’s  
34 jurisdiction, but it may not adopt or seek to enforce any  
35 additional or different customer service or other performance  
36 standards under Section 53055.3, subdivision (q), (r), or (s) of  
37 Section 53088.2, or any other authority or provision of law.

38 (c) The local entity may, by ordinance, provide a schedule of  
39 penalties for the material breach by a holder of a state franchise  
40 of this section. No monetary penalties shall be assessed for a



1 material breach if the breach is out of the reasonable control of  
2 the holder. Further, no monetary penalties may be imposed prior  
3 ~~to the effective date of this section January 1, 2007.~~ Any  
4 schedule of monetary penalties adopted pursuant to this section  
5 shall in no event exceed two hundred dollars (\$200) for each day  
6 of each material breach, not to exceed six hundred dollars (\$600)  
7 for each occurrence of material breach. However, if a material  
8 breach of this section has occurred, and the city, county, or city  
9 and county has provided notice and a fine or penalty has been  
10 assessed, ~~in and if~~ a subsequent material breach of the same  
11 nature ~~occurring~~ occurs within 12 months, the penalties may be  
12 increased by the city, county, or city and county to a maximum  
13 of four hundred dollars (\$400) for each day of each material  
14 breach, not to exceed one thousand two hundred dollars (\$1,200)  
15 for each occurrence of the material breach. If a third or further  
16 material breach of the same nature occurs within those same 12  
17 months, and the city, county, or city and county has provided  
18 notice and a fine or penalty has been assessed, the penalties may  
19 be increased to a maximum of one thousand dollars (\$1,000) for  
20 each day of each material breach, not to exceed three thousand  
21 dollars (\$3,000) for each occurrence of the material breach. With  
22 respect to video providers subject to a franchise or license, any  
23 monetary penalties assessed under this section shall be reduced  
24 dollar for dollar to the extent any liquidated damage or penalty  
25 provision of a current cable television ordinance, franchise  
26 contract, or license agreement imposes a monetary obligation  
27 upon a video provider for the same customer service failures, and  
28 no other monetary damages may be assessed.

29 (d) If the local entity adopts a schedule of monetary penalties,  
30 the following procedures shall be followed:

31 (1) The local entity shall give the video provider written notice  
32 of any alleged material breaches of the consumer service  
33 standards of this ~~division~~ article and allow the video provider at  
34 least 30 days from receipt of the notice to remedy the specified  
35 breach.

36 (2) A material breach for the purposes of assessing penalties  
37 shall be deemed to have occurred for each day, following the  
38 expiration of the period specified in paragraph (1), that any  
39 material breach has not been remedied by the video provider,  
40 irrespective of the number of customers affected.

(e) This section shall not preclude a party affected by this section from utilizing any judicial remedy available to that party without regard to this section. Actions taken by a local legislative body, including a franchising authority, pursuant to this section shall not be binding upon a court of law. For this purpose, a court of law may conduct de novo review of any issues presented.

53058.10. (a) The holder of a state franchise shall perform background checks of applicants for employment, according to current business practices.

(b) A background check equivalent to that performed by the holder shall also be conducted on all of the following:

(1) Persons hired by a holder under a personal service contract.

(2) Independent contractors and their employees.

(3) Vendors and their employees.

(c) Independent contractors and vendors shall certify that they have obtained the background checks required pursuant to subdivision (f), and shall make the background checks available to the holder upon request.

(d) Except as otherwise provided by contract, the holder of a state franchise shall not be responsible for administering the background checks and shall not assume the costs of the background checks of individuals who are not applicants for employment of the holder.

(e) (1) Subdivision (a) only applies to applicants for employment for positions that would allow the applicant to have direct contact with or access to the holder's network, central office, or customer premises, and perform activities that involve the installation, service, or repair of the holder's network or equipment.

(2) Subdivision (b) only applies to ~~person~~ *persons* that have direct contact with or access to the holder's network, central office, or customer premises, and perform activities that involve the installation, service, or repair of the holder's network or equipment.

(f) This section does not apply to temporary workers performing emergency functions to restore the network of a holder to its normal state in the event of a natural disaster or an emergency that threatens or results in the loss of service.

1 53058.11. (a) A holder of a state franchise employing more  
2 than 750 total employees *in California* shall annually report to  
3 the department all of the following:

4 (1) The number of California residents employed by the  
5 holder, calculated on a full-time or full-time equivalent basis.

6 (2) The percentage of the holder's total domestic workforce,  
7 calculated on a full-time or full-time equivalent basis.

8 (3) The types and numbers of jobs by occupational  
9 classification held by residents of California employed by  
10 holders of state franchises and the average pay and benefits of  
11 those jobs and, separately, ~~the number of corporations~~  
12 ~~headquartered outside of California.~~

13 ~~(4) The number of California and separately, the number of~~  
14 ~~out-of-state residents employed by independent contractors,~~  
15 ~~companies, and consultants hired by the holder, calculated on a~~  
16 ~~full-time or full-time equivalent basis, when the holder has~~  
17 ~~obtained this information upon requesting it from the~~  
18 ~~independent contractor, company, or consultant, and the holder is~~  
19 ~~not contractually prohibited from disclosing the information to~~  
20 ~~the public. This paragraph applies only to those employees of an~~  
21 ~~independent contractor, company, or consultant that are~~  
22 ~~personally providing services to the holder, and does not apply to~~  
23 ~~employees of an independent contractor, company, or consultant~~  
24 ~~not personally performing services for the holder.~~

25 ~~(5)~~

26 ~~(4) The holder number of net new positions proposed to be~~  
27 ~~created directly by the holder of a state franchise during the~~  
28 ~~upcoming year by occupational classifications and by category of~~  
29 ~~full-time, part-time, temporary, and contract employees.~~

30 (b) The department shall annually report the information  
31 required to be reported by holders of state franchises pursuant to  
32 subdivision (a), to the Assembly Committee on Utilities and  
33 Commerce and the Senate Committee on Energy, Utilities and  
34 Communications, or their successor committees, and within a  
35 reasonable time thereafter, shall make the information available  
36 to the public on its Internet Web site.

37 53058.12. (a) The provisions of this article are intended to be  
38 consistent with the ~~Federal~~ *federal* Cable Act (47 U.S.C. Sec.  
39 521 et seq.).

(b) Nothing in this section shall be interpreted to prevent a voice provider, cable operator or video service provider, or local entity from seeking clarification of its rights and obligations under federal law or from exercising any right or authority under federal or state law.

*SEC. 2. Section 107.7 of the Revenue and Taxation Code is amended to read:*

107.7. (a) When valuing possessory interests in real property created by the right to place wires, conduits, and appurtenances along or across public streets, rights-of-way, or public easements contained in a cable television franchise or license granted pursuant to *Section 53058.3 or Section 53066* of the Government Code (a “cable television possessory interest”), the assessor shall value these possessory interests consistent with the requirements of Section 401. The methods of valuation shall include, but not be limited to, the comparable sales method, the income method (including, but not limited to, capitalizing rent), or the cost method.

(b) (1) The preferred method of valuation of a cable television possessory interest is capitalizing the annual rent, using an appropriate capitalization rate.

(2) For purposes of this section, the annual rent shall be that portion of that franchise fee received by the franchising authority that is determined to be payment for the cable television possessory interest for the actual remaining term or the reasonably anticipated term of the franchise or license or the appropriate economic rent. If the assessor does not use a portion of the franchise fee as the economic rent, the resulting assessments shall not benefit from any presumption of correctness.

(c) If the comparable sales method, which is not the preferred method, is used by the assessor to value a cable television possessory interest when sold in combination with other property including, but not limited to, intangible assets or rights, the resulting assessments shall not benefit from any presumption of correctness.

(d) Intangible assets or rights of a cable television system are not subject to ad valorem property taxation. These intangible assets or rights, include, but are not limited to: franchises or licenses to construct, operate, and maintain a cable television

1 system for a specified franchise term (excepting therefrom that  
2 portion of the franchise or license which grants the possessory  
3 interest), subscribers, marketing, and programming contracts,  
4 nonreal property lease agreements, management and operating  
5 systems, a work force in place, going concern value, deferred,  
6 startup, or prematurity costs, covenants not to compete, and  
7 goodwill. However, a cable television possessory interest may be  
8 assessed and valued by assuming the presence of intangible  
9 assets or rights necessary to put the cable television possessory  
10 interest to beneficial or productive use in an operating cable  
11 television system.

12 (e) Whenever any change in ownership of a cable television  
13 possessory interest occurs, the person or legal entity required to  
14 file a statement pursuant to Section 480, 480.1, or 480.2, shall, at  
15 the request of the assessor, provide as a part of that statement the  
16 following, if applicable: confirmation of the sales price;  
17 allocation of the sales price among the counties; and gross  
18 revenue and franchise fee expenses of the cable television system  
19 by county. Failure to provide this information shall result in a  
20 penalty as provided in Section 482, except that the maximum  
21 penalty shall be five thousand dollars (\$5,000).

22 *SEC. 3. No reimbursement is required by this act pursuant to*  
23 *Section 6 of Article XIII B of the California Constitution because*  
24 *the only costs that may be incurred by a local agency or school*  
25 *district will be incurred because this act creates a new crime or*  
26 *infraction, eliminates a crime or infraction, or changes the*  
27 *penalty for a crime or infraction, within the meaning of Section*  
28 *17556 of the Government Code, or changes the definition of a*  
29 *crime within the meaning of Section 6 of Article XIII B of the*  
30 *California Constitution.*